IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Bail Appl..No. 4713 of 2007()

CRMP.2486/2007 of D.C. & SESSIONS COURT,KOLLAM
[CRIME NO.260/2006 OF KOTTIYAM POLICE STATION, KOLLAM]

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PETITIONERS/2ND ACCUSED:

NOUSHAD, S/O. SUBAIR KUNJU,
AGED 34 YEARS, BAITHUL JASMINE,
MAYYANAD CHERRY, MAYYANADU, KOLLAM.

BY ADV. SRI.DILEEP P.PILLAI

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4713 of 2007

Dated this the 3rd day of August 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. He, along with the co-accused, faces allegations inter alia under Section 307 read with 149 I.P.C. The accused persons were allegedly members of an unlawful assembly of persons who in prosecution of their common object allegedly attacked the victim and caused serious injuries to the victim. Investigation is in progress. The petitioner apprehends arrest at any moment. The learned counsel for the petitioner submits that the sixth accused had come before this court and sought directions under Section 438 Cr.P.C. Another Bench of this court had permitted that petitioner/sixth accused to surrender before the investigating officer . He was arrested and produced and has already been enlarged on bail. The first accused has also been enlarged on bail, it is submitted.

2. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that there is

no circumstance justifying the invocation of jurisdiction under Section 438 Cr.P.C. Having considered all the relevant inputs, I find merit in such opposition by the learned Public Prosecutor. I find no features in this case which would justify the invocation of powers under Section 438 Cr.P.C. This is a fit case where the petitioners must appear before the learned Magistrate having jurisdiction or the investigating officer and seek regular bail in the normal and ordinary course.

3. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007